NO. 20942

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT C. HILL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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JURISDICTION

Jurisdiction to try the case was within the Federal District Court pursuant to Title 18 U.S.C. Section 3231.

A jury trial was held in the Federal District Court, Southern District of California, Central Division, before Judge Raymond E. Plummer, on January 18, 1965, and appellant was subsequently found guilty on 26 counts of a 29 count indictment for mail fraud, Title 18 U.S.C. Section 1341.

Judge Plummer sentenced appellant to two year's imprisonment on each count, sentences to run concurrently, and to pay all costs of prosecution as provided by Title 28 U.S.C. Section 1918(b), the amount to be taxed according to Title 28 U.S.C. Section 1924,

and inserted by the Clerk of the Court.

This is an appeal from an Order denying Appellant's Motion to Suppress Evidence, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure and Appellant's Motion For Dismissal For Lack of Due Process of Law under the United States Constitution, Amendments 4, 5 and 14.

STATEMENT OF THE CASE

Prior to the year of 1958, appellant had worked in the field of small business financing with the companies of Business Mart of America (R. T. 1691) and Lenders Service Corporation (R. T. 1694), both California corporations. In March, 1958, appellant inserted an ad in the Los Angeles Times soliciting a business associate that had experience in the field of general financing (R. T. 1697, 1698). Through this ad, appellant met Mr. Carl Kaub (R. T. 1698), who was President of National Mortgage Co., Los Angeles, California. With the help of Carl Kaub, appellant formed the corporation known as Inter-American Loan Service, hereinafter referred to as IALS, in order to solicit people to borrow money from National Mortgage Co. (R. T. 1701). Appellant was the president, owner, and operator of IALS until March 30, 1959, when he received an Order from the California Corporations Commissioner to cease and desist from continuing to transact business as IALS (R. T. 135). As a result of this Order, on April 17, 1959, appellant turned over all records of IALS along with his personal

records to the United Lender's Service for further processing and storage (R. T. 124, 125, 1785). These records were turned over to Mr. Scherief Momaud, who was the manager for United Lender's Service, a corporation. Appellant had no interest whatsoever in the business of the United Lender's Service (R. T. 124, 125). Appellant gave no authority to Mr. Scherief Momaud to disclose, exhibit, transfer or convey the records to any other party (R. T. 126).

In July, 1959, Mrs. Leland Hill, the sister-in-law of appellant, went to the offices of United Lender's Service, and removed all of the records on the premises including those of IALS and appellant's personal records. She took them to her home in West Los Angeles (R. T. 142). Mrs. Leland Hill stated that she did not have permission from appellant, Mr. Scherief Momaud, Mr. Leland Hill, or anyone else connected with United Lender's Service or IALS to remove the records (R. T. 142, 145).

During the period of April 17, 1959 to July, 1959, appellant was arrested on a criminal complaint issued out of Fresno County, California, for violation of Section 112 of the California Penal Code, Criminal Conspiracy, and was either in custody or out on bail (R. T. 153). This charge against appellant was later dismissed on motion of the District Attorney, and appellant plead guilty to violation of Section 10131 of the California Real Estate Code, a misdemeanor, acting as a broker without obtaining a license. During the period of time that appellant was charged under Section 112 of the California Penal Code, the acting Chief of Police of

Selma, California, Mr. William Doren Davis, attempted to obtain evidence against appellant and in furtherance thereof, he obtained a Search Warrant from the Honorable Judge Kathleen Parker, Los Angeles Municipal Court, for the records of IALS and/or Mr. Robert Hill, appellant (R. T. 153, 154) (Plaintiff's Exhibit No. 36). Chief Davis proceeded to the three places specified in the Search Warrant, #496, and could find no persons or records at any of the places specified therein (R. T. 176). Chief Davis obtained no Search Warrant other than #496, referred to above (R. T. 165). Chief Davis was subsequently informed that the records of IALS and/or appellant, Robert Hill, were being stored at the home of Mrs. Leland Hill. Chief Davis along with Deputy District Attorney Michael Kershaw of Fresno County and a Los Angeles detective, proceeded to the home of Mrs. Leland Hill, wherein he identified himself and told Mrs. Hill that he had a Search Warrant for the records of IALS and Mr. Robert Hill (R. T. 155). Mrs. Leland Hill informed Chief Davis that he would not need a Search Warrant for the records and she subsequently unlocked the garage door at her home and allowed them to take all of the records that she had stored there (R. T. 155). Chief Davis subsequently returned Search Warrant #496, with a signed affidavit that it was not served on anyone, that there was no evidence obtained from the Search Warrant (R. T. 175). Mr. Michael Kershaw subsequently sent a letter to the Los Angeles Municipal Court stating that no evidence was obtained from the Search Warrant (Plaintiff's Exhibit #37).

The records were subsequently taken by car to the office

of the District Attorney in Fresno County (R. T. 1730) and the boxes were separated and stored in different offices. None of the files or records of IALS were ever used against appellant in Fresno County (R. T. 1737), nor were they ever returned to appellant. All of the files and records were subsequently turned over to the United States Postal Inspector in the year 1959 or 1960 (R. T. 510, 511, 1738). The United States Government had continuous control and custody of all of the files and records of IALS from the year 1959 or 1960 to present.

On April 10, 1964, appellant filed his Motion to Suppress Evidence (C. T. 48) and said Motion was denied. On January 18, 1965, the defendant filed a Motion to Dismiss for Lack of Due Process of Law (C. T. 75), and said Motion was denied. On January 18, 1965, defendant filed his second Motion To Suppress Evidence (C. T. 77), and said Motion was denied (R. T. 185). The records of IALS were subsequently admitted into evidence and used against appellant over the continuing objection of appellant's counsel (R. T. 293).

QUESTIONS INVOLVED

1. Can appellant raise the issue of unlawful search and seizure of alleged corporate records when the search is directed against him and not against the corporation and he is the president, owner and sole operator of the company?

2. Was there a lawful search and seizure of IALS

records by state authorities when Chief Davis obtained these records without a valid search warrant (R. T. 176) from the home of Mrs. Leland Hill, upon his stating to her that he had a search warrant for the records of the company (R. T. 155)?

3. Could Mrs. Leland Hill, who had no interest in the property, consent to the search and seizure of IALS records when she obtained these records without the owner's permission and was never authorized to release them?

4. If the records of IALS were unlawfully obtained through illegal search and seizure by state authorities, can these records be used against appellant by federal authorities who had subsequently obtained the records from the state authorities?

5. Was appellant denied his constitutional right for lack of due process when all of his records were in the hands of the prosecution for over four years; when he could not recall from memory the contents of the files; when he was first shown the files a few days or weeks before the trial and large numbers of documents were missing from them which would have helped him in his defense?

SPECIFICATION OF ERRORS

The trial court erred in:

1. Denying appellant's Motion to Suppress Evidence of an unlawful search and seizure by state authorities of alleged corporate records on the grounds that the search was directed

against IALS and not against appellant. The corporation never issued any stock (R. T. 121), and the two original incorporators besides appellant were nothing but straw people because of the necessity that a corporation have three directors (R. T. 1860, 1861). Even the prosecuting attorney stated that appellant was the owner, organizer, and operator of IALS (R. T. 102, 2045).

The trial court ruled that appellant's Motion to Suppress Evidence was denied because the records that were seized by the state authorities were corporate records and not the records of appellant. The court also stated that the corporation was not protesting nor objecting nor were the records being used against the corporation (R. T. 184).

Appellant's attorney had a continuing objection to all evidence introduced by the prosecution based upon the allegation that all such evidence was obtained by illegal search and seizure and the trial court allowed the continuing objection (R. T. 293).

2. Allowing the records of IALS to be introduced into evidence by the prosecution when they were obtained under false pretenses. The trial court never ruled as to whether there was a valid search and seizure of the records by Chief Davis when he obtained them from the home of Mrs. Leland Hill.

It was admitted by Chief Davis that he only obtained one search warrant #496, and that it was signed by Municipal Court Judge Kathleen Parker (R. T. 141). He admits that he went to the three places designated in the search warrant and found no people at these places and that he subsequently went to the home of Mrs.

Leland Hill whose address was not included in the search warrant (R. T. 176). Chief Davis told Mrs. Hill that he had a search warrant for the records of the loan company and she replied that he didn't need a search warrant (R. T. 155).

3. Allowing the records of IALS to be introduced into evidence by the prosecution when they were obtained through unlawful search and seizure, by state authorities, from Mrs. Leland Hill, who had no authority to give these records to anyone, and who had no interest whatsoever in the property (R. T. 145, 146).

The trial court never ruled on whether there was a lawful search and seizure of IALS' records when they were taken from Mrs. Leland Hill by the state authorities.

4. Not excluding the records of IALS, when introduced by the prosecution, under the Silver Platter Doctrine. These records were turned over to the federal authorities by state authorities in the year 1959 or 1960 (R. T. 511). The Silver Platter Doctrine precludes evidence which is unlawfully obtained by state authorities, through illegal search and seizure, from being used by federal authorities against a defendant.

The trial court did not rule on the Silver Platter Doctrine since the Court did not determine whether the evidence was obtained through illegal search and seizure. Appellant contends that the records of IALS were obtained through illegal search and seizure and therefore could not be used by federal authorities in the present case.

5. Denying appellant's Motion to Dismiss for Lack of

Due Process of Law (R. T. 185) since appellant was denied his constitutional rights under the United States Constitution, Amendments 4, 5 and 14. The United States Government had all of appellant's files for over four years prior to the time that it filed an indictment against him. Prior to that time, the files remained in the hands of the Fresno County District Attorney's office and were scattered about in various offices. When appellant was allowed to examine these files shortly before trial, he discovered that numerous papers and documents were missing, and he was therefore unable to furnish a defense to the indictment against him.

ARGUMENT

I

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE WHERE THIS EVIDENCE WAS OBTAINED BY STATE AUTHORITIES THROUGH ILLEGAL SEARCH AND SEIZURE AND WAS SUBSEQUENTLY HANDED OVER TO THE FEDERAL AUTHORITIES FOR FEDERAL PROSECUTION.

A. Appellant contends that the records of IALS should not have been allowed into evidence and that appellant's Motion to Suppress Evidence should have been granted. Appellant would not have been convicted if this evidence was suppressed, since every witness against appellant testified as to some document that was illegally obtained (R. T. 2033). In addition, all of the alleged victims were contacted through these documents and proof of mailing was established by the correspondence in the files of IALS.

The U. S. Attorney's Office waited over four years to bring the indictment against appellant, and during this entire time, it had all of appellant's records. Why did it wait so long? No one will ever be certain of the correct answer to this question, but one can conjecture that the documents were considered to be illegally obtained and therefore no case could be made against appellant. When the five year statute of limitations approached, the U. S. Attorney's Office probably decided to risk the chance of the documents' legality in its possession, and filed an indictment against appellant. Of course, appellant had little or no recollection of the contents of his files due to the long period of time that had passed, and therefore, he had little chance of refuting the incriminating evidence that was introduced against him during the trial.

The trial judge made a finding that the files and records of IALS belonged to a corporation and therefore appellant had no standing to object to its introduction on the ground of illegal search and seizure. The Court made no other findings on the various other questions that were raised by appellant's Motion to Suppress because these questions were considered moot after its ruling that the records belonged to a corporation.

The trial court's ruling on appellant's Motion to Suppress was clearly erroneous. Chief Davis had a criminal complaint against appellant at the time that he obtained the search warrant and he was not concerned with IALS. He testified that he was looking for evidence against appellant and no mention was made of the IALS corporation as a defendant. It should be noted that IALS was

no longer in business at the time Chief Davis obtained these records. Appellant was IALS. Uncontradicted testimony, confirmed by the prosecuting attorney, was that appellant was the president, organizer, owner, and operator of IALS. No corporation stock was ever issued. The required two other directors were merely straw people.

The law is clear:

> "In order to qualify as a 'person aggrieved by an unlawful search and seizure', one must have been a victim of a search of seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else. . . ." Jones v. United States, 362 U.S. 257, 261 (1960).

Even appellee agrees with this law since appellee gave the above citation in its opposition to defendant's Motion to Suppress Evidence (C. T. 58). The records obtained by Chief Davis were to be used against appellant and were not "evidence gathered as a consequence of a search or seizure directed at someone else". Federal Rules of Criminal Procedure, Rule 41(e) provides:

> "A person aggrieved by an unlawful search and seizure may move the District Court . . . for the return of the property and to suppress for the use as evidence anything so obtained. . . ."

Appellant contends that he qualified as a "person aggrieved" within the meaning of Rule 41(e) since his standing is based upon an interest in the property that was illegally seized.

In the Jones case, supra, the authorities discovered narcotics in the awning of defendant's friend's apartment. The U. S. Supreme Court held that defendant had standing to bring a Motion to Suppress even though defendant never alleged ownership nor possession of the seized articles, nor an interest in the premises searched.

In the present case, there is no dispute that the State authorities were only interested in appellant and not against IALS, which was already out of business, when they obtained a search warrant. Chief Davis was seeking evidence for the District Attorney of Fresno County, who has previously filed a felony complaint against appellant. The mere fact that the documents were said to belong to IALS does not subtract the interest appellant had in those papers. IALS and appellant were interchangeable since appellant formed the corporation, was the president, organizer, operator and owner of it. No stock was ever issued. In the case of Henzel v. United States, 296 F. 2d 650 (5th Cir. 1961), the defendant was prosecuted for mail fraud. Defendant was the organizer, sole stockholder, and president of the corporation. The court held that defendant could move to suppress evidence consisting of corporate records that were obtained in an unlawful search of corporate premises. On page 652, the Court stated that the Jones case, supra, was controlling, and that defendant was clearly

aggrieved because he was the one against whom the search was directed (similar to the case at bar), and that it made no difference that the property seized and the premises searched were owned by a corporation rather than by an individual. A corporation has the same rights as a natural person to be free from illegal search and seizure. Also see Villano v. United States, 310 F. 2d 680 (1962).

The policy considerations should not be overlooked in cases involving illegal search and seizure. Illegally obtained evidence is suppressed to discourage unlawful police activity, not to acquit guilty defendants. So long as unlawfully obtained evidence may be used, the police are encouraged to continue violations to secure such evidence. The "Fruit of the Poisonous Tree" Doctrine expressly recognizes this. To deny the derivative standing concept would invite law enforcement officers to select one defendant to be a victim of unlawful procedure in the hope that information would be gained from him to convict others. The one defendant-victim could be allowed to go free without indictment in order to snare his contemporaries. Such a result is inconsistent with the purpose of suppressing any unlawfully secured evidence, and one may agree with Mr. Justice Holmes that "such evidence shall not be used at all".

In the present case, the trial judge erroneously ruled that appellant had no standing to object to the introduction of the records since they were corporate records, the corporation was not protesting and they were not being used against the corporation (R. T.

184). Judge Plummer was referring to IALS, which was already out of business at the time the illegal search and seizure took place. How can a nonexisting corporation object to the introduction of evidence? Unfortunately, Judge Plummer was looking at form and not substance. He saw the words IALS and ruled that it was not appellant's records. This ruling clings to the antiquated cases where technicalities prevailed and substance was secondary to rigid rules of the game. If a defendant used the wrong form on appeal, he summarily lost his case. This is not the situation today. In the last few years, the Federal Courts have looked to substance and unshackled themselves from the forms that bound them. The U. S. Supreme Court recognized this principle when it stated in Jones v. United States, supra, on page 264:

> "Under Rule 41(e), 'the court in its discretion may entertain the Motion [to Suppress] at the trial or hearing.' This qualification proves that we are dealing with carrying out an important social policy and not a narrow, finicky procedural requirement."

B. The records of IALS that were obtained by Chief Davis were taken from Mrs. Leland Hill under color of authority when he stated that he had a search warrant for the company records. Since Chief Davis had no valid search warrant in his possession, the seizure of the files and records was clearly unlawful since Mrs. Hill assumed the truthfulness of the statement and voluntarily surrendered the records to Chief Davis. In order for

a search and seizure to be valid, the individual giving the documents must freely and intelligently give his unequivocal and specific consent to the search and it must be uncontaminated by any duress or coercion, actual or implied. The government has the burden of proving by clear and positive evidence that such consent was given. Chief Davis testified that Mrs. Leland Hill stated that he did not need a search warrant after he informed her that he had one in his possession. Mrs. Leland Hill testified that she would not have given the records to Chief Davis had she not been coerced into doing so. In either situation, it is quite obvious that Mrs. Leland Hill did not freely consent to the search and seizure without actual or implied coercion.

A search warrant does not validate a search made at a location not specified in the warrant. Federal Courts apply federal standards in determining the lawfulness of a search and seizure made by state authorities, U. S. Constitution, Fourth Amendment; Trupiano v. United States, 334 U.S. 699, 710 (1948).

A search warrant is not needed when the documents are voluntarily given to the authorities by one who has a right to release them. The important question is whether Mrs. Leland Hill had a right to release them and if so, did she voluntarily release them?

Appellant contends that Mrs. Leland Hill had no right to release the records since she had no proprietary interest in them, and was never given direct or implied permission to release the records to anyone. Mere possession does not confer authority to allow search and seizure, United States v. Blok, 188 F. 2d 1019

(D. C. Cir. 1951); Cunningham v. Heinze, 352 F. 2d 1 (9th Cir. 1965); Stoner v. California, 376 U. S. 483 (1964); Chapman v. United States, 365 U. S. 610 (1961); Reeves v. Warden, Maryland Penitentiary, 346 F. 2d 915 (4th Cir. 1965); Holzhey v. United States, 223 F. 2d 823 (5th Cir. 1955).

Mrs. Leland Hill never voluntarily released the records to the state authorities. She only released them through coercion of an illegal Search Warrant. Where one establishes the invalidity of the search, then "the government has the burden of convincing the Court by clear and positive testimony that there was no duress or coercion, actual or implied" by Watson v. United States, 249 F. 2d 106, 108, 101 U. S. App. D. C. 350, 352.

There appears little room for argument that Mrs. Hill submitted to authority when Chief Davis stated that he had a search warrant. This rule was forcefully brought home in the case of Judd v. United States, 190 F. 2d 649, 651 (D. C. Cir. 1951), where the Court stated:

> "Thus 'invitations' to enter one's house, extended to armed officers of the law who demand entrance, are usually to be considered as invitations secured by force . . . a like view has been taken where an officer displays his badge and declares that he has come to make a search . . . even where the house-holder replies, 'all right' . . . . Intimidation and duress are almost necessarily implicit in such situations. . . ."

Numerous cases since Judd v. United States, supra, have squarely held that consent was vitiated even where officers do not conduct themselves in an overreaching manner. Williams v. United States, 263 F.2d 487, 489, 105 U.S. App. D.C. 41, 43 (1959); Higgins v. United States, 209 F.2d 819, 93 U.S. App. D.C. 340 (1954); United States v. Evans, 194 F. Supp. 90 (D.D.C. 1961); United States v. Roberts, 179 F. Supp. 478 (1959); United States v. Minor, 117 F. Supp. 697 (E.D. Okla. 1953); Whitley v. United States, 237 F.2d 787, 99 U.S. App. D.C. 159 (1956); Lee v. United States, 232 F.2d 354, 355, 98 U.S. App. D.C. 97, 98 (1956); Waldron v. United States, 219 F.2d 37, 95 U.S. App. D.C. 66 (1955).

In the case of Channell v. United States, 285 F.2d 217 (9th Cir. 1960), the Court held that:

> "A search and seizure may be made without a search warrant if the individual freely and intelligently gives his unequivocal and specific consent to the search, uncontaminated by any duress or coercion, actual or implied. The Government has the burden of proving by clear and positive evidence that such consent was given."

The state courts have also ruled upon this question and they have held that no consent was given where authorities used implied coercion, Wilkerson v. State (1927), 37 Okla. Crim. 43, 256 Pac. 63; Rose v. State (1927), 36 Okla. Crim. 333, 254 Pac.

509; Arnold v. State (1928), 110 Tex. Crim. 529, 7 S. W. 2d 1083, 9 S. W. 2d 333.

In the case of Jordan v. State (1928), 111 Tex. Crim. 83, 11 S. W. 2d 323, the state officers were armed with a search warrant which the court found to be insufficient with respect to the premises searched. The officers told defendant's wife they had a search warrant and desired to search the house. The wife stated, "No, go ahead and search". The court held that this was not a valid search and seizure due to the officers' conduct and remarks. The Jordan case is very similar to the present case at bar.

Appellant contends that Mrs. Leland Hill was coerced into surrendering these records to the state authorities when Chief Davis informed her that he had a search warrant for them. Appellant further contends that even if Mrs. Leland Hill was not coerced into surrendering these records, she still was not authorized to do so, and therefore, the records were illegally obtained.

C. If the records of IALS were obtained through illegal search and seizure by the state authorities, then these records could not be used against appellant in the present case. The Silver Platter Doctrine is firmly established in Federal law, as was brought out in the case of Elkins v. United States, 364 U.S. 206 (1960). The security of one's privacy against arbitrary intrusion by the police is implicit in the concept of ordered liberty and as such, enforceable against the states through the due process clause. Elkins v. United States, supra. In that case, the court stated that

the test of whether evidence has been obtained in an unreasonable search and seizure by state officers is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed.

The search and seizure as conducted by Chief Davis would certainly have been unlawful if conducted by federal officers for the Fourth Amendment states that "no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized". The search warrant in the hands of Chief Davis did not describe the premises of Mrs. Leland Hill.

The U. S. Supreme Court left no doubt as to the exclusion of ill gotten evidence, when it stated on page 221 of the Elkins case:

> "When a Federal Court sitting in an exclusionary state admits evidence lawlessly seized by state agents, it not only frustrates state policy, but frustrates that policy in a particularly inappropriate and ironic way. For by admitting the unlawfully seized evidence, the Federal Court serves to defeat the state's effort to assure obedience to the Federal Constitution. In states which have not adopted the exclusionary rule, on the other hand, it would work no conflict with local policy for a Federal Court to decline to receive evidence unlawfully seized by state officers. The question with which we deal today affects not at all the freedom of the states to develop and apply their own sanctions in their

own way. . . .

"Free and open cooperation between state and federal law enforcement officers is to be commended and encouraged. Yet that kind of cooperation is hardly promoted by a rule that implicitly invites federal officers to withdraw from such association and at least tacitly to encourage state officers in the disregard of constitutionally protected freedom. If, on the other hand, it is understood that the fruit of the unlawful search by state agents will be inadmissible in federal trial, there can be no inducement to subterfuge and evasion with respect to federal-state cooperation in criminal investigation. Instead, forthright cooperation under constitutional standards will be promoted and fostered."

The Elkins case, supra, goes on to state that the Fourth Amendment does not forbid all search and seizures, but only unreasonable searches and seizures.

In the present case, the records were unlawfully taken by state authorities and subsequently turned over to the federal authorities for prosecution of appellant (R. T. 510, 511, 1738). If Judge Plummer applied federal law in determining whether the records were obtained through illegal search and seizure, as stated in Elkins v. United States, supra, then appellant's Motion To Suppress should have been granted. Without these records, appellant

would never have been convicted since every Count of the Indictment was supported by some document obtained from appellant's files (R. T. 2033, also Plaintiff's Exhibits).

II

APPELLANT WAS DENIED DUE PROCESS OF LAW UNDER AMENDMENTS FOUR, FIVE, AND FOURTEEN, OF THE UNITED STATES CONSTITUTION WHEN STATE AND FEDERAL AUTHORITIES HELD HIS RECORDS FOR OVER FOUR YEARS AND ALLOWED IMPORTANT DOCUMENTS TO BE LOST OR TAKEN FROM THE FILES.

Approximately ten days before his trial, appellant was allowed to examine the files that were seized by the authorities over four years previous to that date. There were over two hundred files involved, and appellant was shocked to discover some folders blank and others that had documents missing that were necessary for appellant's defense (C. T. 64). No evidence was introduced as to why the documents were not returned to appellant or what happened to the missing papers. On the surface it appears that all documents that were unfavorable to appellant, or irrelevant, were retained while all documents that were favorable to appellant were discarded. Since there were numerous prosecution authorities that had possession of these documents from the time that they were taken until the time that appellant examined them on January 8, 1964, it would be impossible to point the finger of blame upon anyone. However, this should be no reason why appellant suffer the

consequences of the lost documents.

The Fourth, Fifth and Fourteenth Amendments to the United States Constitution state that the people shall be secure against unreasonable search and seizure of their property and that they shall not be deprived of liberty or property without due process of law.

Appellant was deprived of his property by unreasonable search and seizure and also without due process of law since defendant's attorney could not adequately prepare a defense to the charges against appellant without the necessary papers that were missing from the files (C. T. 75).

CONCLUSION

For the above reasons, it is respectfully submitted that the judgment on all Counts should be reversed.

Respectfully submitted,

JACK HADDAD

Attorney for Appellant.

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Jack Haddad

JACK HADDAD

APPENDIX "A"

TABLE OF EXHIBITS

Plaintiff's Exhibits	For Identification	In Evidence
36	159	172
37	172	174